

STATE OF INDIANA )  
 ) SS:  
COUNTY OF PULASKI )

IN THE PULASKI CIRCUIT COURT  
CAUSE NO. 66 Col-0610-PL-007

STATE OF INDIANA,  
Plaintiff,

v.

DENNIS PITCHER, and  
STELLA PITCHER,  
individually and doing business as  
THE CUSTOM TOUCH CABINETS,  
Defendants.

**FILED**

OCT 10 2006

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*Janet H. Kennedy*  
CLERK PULASKI CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this complaint, the Defendants, Dennis Pitcher and Stella Pitcher, individually and doing business as The Custom Touch Cabinets, were individuals engaged in the sale of custom cabinets via the internet from their principal place of business in Pulaski County, located at 808 North Market Street, Winamac, Indiana, 46996.

3. Since at least December 19, 2005, the Defendants have entered into contracts with consumers for the sale of custom cabinets via the Internet.

**A. Allegations regarding Tamara L. Kroner's Consumer Transaction.**

4. On or around December 19, 2005, the Defendants entered into a contract with Tamara L. Kroner ("Kroner") of Saint Augustine, Florida, wherein the Defendants represented they would sell custom cabinet doors to Kroner for a total price of Four Hundred and Thirty-Two Dollars (\$432.00), which Kroner paid.

5. On December 19, 2005, the Defendant, Stella Pitcher, represented to Kroner her cabinet doors would be completed and shipped in about six and one-half weeks.

6. On February 13, 2006, the Defendants represented to Kroner they were running behind and her order would be shipped in about two (2) weeks.

7. On or about March 9, 2006, the Defendants e-mailed their customers, including Kroner, stating that due to delays, customers who no longer wanted to wait for their orders could cancel, and further stated, "If you would like a refund, we would be happy to give you one, we will waive the \$100 cancellation fee, and we will be sending out refunds on April 28<sup>th</sup> [2006]."

8. On or about May 10, 2006, the Defendants e-mailed Kroner and stated, "I will send a Paypal refund on Friday [May 12, 2006]."

9. As of today, the Defendants have yet to either deliver the cabinet doors, or to provide a refund to Kroner.

**B. Allegations regarding Lee Ann Diamond's Consumer Transaction.**

10. On or around December 22, 2005, the Defendants entered into a contract with Lee Ann Diamond ("Diamond") of Boca Raton, Florida, wherein the Defendants represented they would sell kitchen cabinet doors and drawer fronts to Diamond for a total price of One Thousand Five Hundred and Thirteen Dollars (\$1,513.00), which Diamond paid.

11. Shortly after contract formation, the Defendants represented the cabinet doors and drawer fronts would be delivered in approximately six to eight weeks.

12. As of today, the Defendants have yet to either deliver the cabinet doors or drawer fronts, or to provide a refund to Diamond.

**C. Allegations regarding Arnold D. Holzman's Consumer Transaction.**

13. On or around January 22, 2006, the Defendants entered into a contract with Arnold D. Holzman ("Holzman") of Woodbridge, Connecticut, wherein the Defendants represented they would sell six (6) cabinet doors to Holzman for a total price of One Hundred and Forty-Five Dollars (\$145.00), which Holzman paid.

14. Shortly after contact formation, the Defendants represented the cabinet doors would be manufactured and delivered by the second week in March [2006].

15. After Holzman inquired about the status of his cabinet door delivery, the Defendants E-mailed Holzman and stated the cabinet doors would be delivered by the end of July [2006].

16. As of today, the Defendants have yet to either deliver the cabinet doors, or to provide a refund to Holzman.

**D. Allegations regarding David F. Vogl's Consumer Transaction.**

17. On or around March 27, 2006, the Defendants entered into a contract with David F. Vogl ("Vogl") of Manchester, Missouri, wherein the Defendants represented they would sell custom cabinet doors and drawer fronts to Vogl for a total price of Three Hundred and Seventy-Seven Dollars (\$377.00), which Vogl paid.

18. On April 22, 2006, the Defendants represented the cabinet doors and drawer fronts would be shipped around May 19, 2006.

19. In response to Vogl's inquiry regarding the status of his shipment, the Defendants sent Vogl an E-mail on June 1, 2006 stating, "[Shipping] will be within the next 2 weeks."

20. On June 19, 2006, the Defendant, Dennis Pitcher, sent an E-mail to Vogl offering to provide a refund.

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented they would deliver the refund within a reasonable period of time.

22. As of today, the Defendants have yet to either deliver the cabinet doors or drawer fronts, or to provide a refund to Vogl.

**E. Allegations regarding Jeffrey A. Harber's Consumer Transaction.**

23. On or around May 10, 2006, the Defendants, entered into a contract with Jeffrey A. Harber ("Harber") of Mechanicsville, Virginia, wherein the Defendants represented they would sell custom cabinet doors and drawer fronts to Harber for a total price of Four Hundred and Thirty-Six Dollars (\$436.00), which Harber paid.

24. Shortly after contract formation, the Defendants represented the cabinet doors and drawer fronts would be shipped on May 20, 2006.

25. As of today, the Defendants have yet to either deliver the cabinet doors or drawer fronts, or to provide a refund to Harber.

**COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

26. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 25 above.

27. The transactions referred to in 4, 10, 13, 17, and 23 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

28. The Defendants are "suppliers" as defined by Ind. Code § 24-5-0.5-2(a)(3).

29. The Defendants' representations to consumers they would sell items to consumers, when the Defendants knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 4, 10, 13, 17, and 23, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

30. The Defendants' representations to consumers they would issue refunds to consumers, including Kroner and Vogl, when the Defendants knew or reasonably should have known the transaction did not have any such rights or remedies, as referenced in paragraphs 7, 8, and 20, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

31. The Defendants' representations to consumers the Defendants would deliver the items, issue a refund, or otherwise complete the subject matter of the consumer transactions within a stated or reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 5, 6,

7, 8, 11, 14, 15, 18, 19, 21, and 24, constitute a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

32. The Defendants' representations to consumers they would be able to purchase the items as advertised by the Defendants, when the Defendants did not intend to sell the items as represented, as referenced in paragraphs 4, 10, 13, 17, and 23, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

33. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 32 above.

34. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 23, and 24 above were committed by the Defendants with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Dennis and Stella Pitcher, individually and doing business as The Custom Touch Cabinets, enjoining the Defendants from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have, which the Defendants know or reasonably should know it does not have;
- b. representing, expressly or by implication, the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is

false and if the Defendants know or reasonably should know the representation is false;

- c. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and
- d. representing, expressly or by implication, the consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, when the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

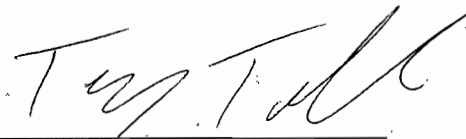
- a. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to those consumers identified in paragraphs 4, 10, 13, 17, and 23, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendant, including but not limited to those consumers identified in paragraphs 4, 10, 13, 17, and 23, in an amount to be determined at trial;

- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count II of the Plaintiff's complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

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